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The Anti-Foreign Sanctions Law

I. Introduction

On June 10, 2021, China released the Anti-foreign Sanctions Law (“**AFSL**”). The Anti-foreign Sanctions law, consisting of 16 articles, aims at responding to foreign sanctions with China’s own countersanctions. In this publication, we will introduce the key content and provide suggestions to foreign companies in China.

II. Key Content

The key content of the AFSL can be summarized in five areas:

1) The Applicable Circumstances

In solemn words, the AFSL describes the circumstances under which China will adopt corresponding countermeasures. As was to be expected, these circumstances are limited to situations in which China is, according to its own perspective, a victim. This is, for example, when a foreign country *“in violation of international law and basic norms of international relations contains or suppresses China under various pretexts or pursuant to its own laws, adopts discriminatory restrictive measures against any Chinese citizen or organization, and meddles in China's internal affairs”*.

It is certainly safe to assume that circumstances on the international stage will not always be as clear-cut as China would like them to be here. But that is not the subject of this publication.

What is known, despite the somewhat unclear wording, however, is that fact that the AFSL is applicable to individuals, organizations and foreign countries. If they, according to China’s perception, engage in above-stated activities, they may be subjected to the measures prescribed in the AFSL.

2) The Applicable Individuals and Organizations

Individuals and organizations that are directly or indirectly involved in the development, decision-making, and implementation of the measures against China may be put on a countermeasure list.

Thereby, the AFSL also clarifies that the following individuals and organizations may be included on such list, even if they have neither a direct nor an indirect involvement in the measures against China:

- a. Spouses and immediate family members of individuals included in the countermeasure list;
- b. senior executives or actual controllers of organizations included in the countermeasure list;
- c. organizations where individuals included in the countermeasure list serve as senior executives;
- d. organizations that are controlled by individuals and organizations included in the countermeasure list or of which the said individuals and organizations participate in the formation or operation.

3) The Countermeasures

The actions available to the State Council, which are carefully called countermeasures implying that China is only defending itself against an aggression, can be adopted cumulatively or individually against individuals and/or organizations. They include the following:

- a. Refusing to issue a visa, denying entry, canceling a visa, or deportation;
- b. placing under seal, impounding, or freezing movables, immovables, and other types of property in the territory of China;
- c. prohibiting or restricting organizations and individuals in the territory of China from carrying out relevant transactions, cooperation, and other activities with them;
- d. other necessary measures.

“Other necessary measures” is of course an extremely broad term, giving the State Council virtually unlimited power to decide and adopt measures at their pleasure with virtually no option for people targeted by these measures to oppose the very measure taken against them.

4) The Decision-Making Governmental Authorities

The State Council determines who will be put on a countermeasure list and, as pointed out above, it will also decide what countermeasures will be adopted against them. The decision is final, which is of course remarkable given the extremely broad discretion the State Council has in terms of deciding who is deserving of countermeasures and what kind of measures would be adopted.

Nevertheless, the AFSL states that based on any changes of circumstances, the State Council can suspend, modify, or remove the measurements. The determination, suspension, modification, or removal of the countermeasure list and countermeasures will be announced by an order issued by the Ministry of Foreign Affairs or by the State Council.

5) The Enforcement of the Countermeasures

Organizations and individuals in China are obliged to implement the countermeasures as determined by the State Council. If they fail to do so, the State Council may restrict or prohibit them from carrying out “relevant activities”, leaving it open, however, what the AFSL means with “relevant activities”.

In addition, the AFSL also stipulates that no organization or individual may implement or assist in the implementation of measures adopted by foreign countries against Chinese citizens and organizations (meaning in essence: against China). Violators can even be sued in a People’s Court for compensation. Given the broad definition of what a measure falling within the scope of the AFSL can be, this option to go against an alleged violator is another remarkable feature of the AFSL.

In summary, any organization or individual that fails to implement China’s countermeasures or implements foreign countries’ sanction measures against

China may be held legally liable, whereby it remains to a large part unclear, what this liability entails.

III. The Implementation of the Anti-Foreign Sanctions Law

Under the AFSL, China has announced to sanction six American individuals including Wilbur Ross, the Chairman of the U.S.-China Economic and Security Review as well as an entity, the Hong Kong Democracy Council. This is seen as a retaliation against these individuals and the entity, which warned U.S. companies in Hong Kong about the “*growing risk*” posed by Beijing. China believes that all matters related to Hong Kong are its internal affairs and therefore considers such warnings a defamation and a meddling with internal affairs. This remains the only implementation of the AFSL so far. No specific penalties have been announced. No for-profit companies have been sanctioned under the AFSL.

Before the AFSL was adopted, in March 2021, China has sanctioned ten individuals and four entities from the EU in response to the sanctions adopted by the EU against Chinese officials. These EU individuals and their families are prohibited from entering the territory of China. The EU enterprises or organizations sanctioned by China are prohibited or restricted in conducting business in China. Though these sanctions were adopted before the release of the AFSL, they may serve as an example of the kind of measures that can be expected to be taken under the AFSL.

From the history, it also clearly evolves that China’s biggest concern, or the most likely justification for sanction, is the so-called interfering in internal affairs.

IV. Consequences for Foreign Companies in China

Of course, it was always clear that one could get on the screen of Chinese authorities at any time. However, the AFSL is likely to lead to increased action against individuals or companies that, from the Chinese perspective, violate one of their broadly worded interests. It is therefore advisable to be aware of these interests and to communicate carefully.

Foreign companies should be aware that individual actions of their employees, which might be perceived as misconduct by the Chinese authorities, may backfire on the company.

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